LIBRARY
SUPREME COURT, U. S.

No. 1440

Supreme Court, U.S.
FILED
MAR 5 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

MELVIN WILSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

HARRY G. FINS
77 West Washington Street
Suite 1521
Chicago, Illinois 60602
Attorney for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes and Regulations Involved	3
Statement of the Case	4
Reasons for Granting the Writ	6
A. The Court of Appeals has interpreted and construed an important Federal Statute, and regulations issued pursuant thereto, which have not been interpreted and construed by this Court. Further, the Court of Appeals has interpreted and construed said Statute and regulations in a manner in conflict with applicable decisions of this Court interpreting an analogous Statute	6
B. The decision of the Court of Appeals establishes that the prosecution may mislead the Accused by use of the phrase "et seq." in violation of the Sixth Amendment to the Constitution of the United States and Rule 7(c) of the Federal Rules of Criminal Procedure	12
Conclusion	14

Appendices:

Opinion of Court of Appeals	App. 1
Title 7 of United States Code	App. 7
Regulations of Department of Agriculture	App. 11

LIST OF AUTHORITIES

Cases Cited

PAGE

Baggett v. Bullitt, 377 U.S. 360 11

United States v. Resnick, 299 U.S. 207 8

Constitution

Sixth Amendment to the United States Constitution .. 13

Statutes

7 U.S.C. § 2013(a) 7

7 U.S.C. § 2015(b) 8

7 U.S.C. § 2023(d) 6

Rules

Rule 7(c) of the Federal Rules of Criminal Procedure 12, 13

In the
Supreme Court of the United States

OCTOBER TERM, 1970

NO.

MELVIN WILSON,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Melvin Wilson, petitioner, prays that a Writ of Certiorari issue to the United States Court of Appeals for the Seventh Circuit to review the decision and judgment of that court affirming the judgment of conviction of the petitioner in the United States District Court for the Northern District of Illinois, Eastern Division, on an indictment charging him with violating 7 U.S.C. Section 2023 (issuance or presentment for redemption of food stamp coupons).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is not yet reported. A copy of said opinion is attached hereto as Appendix pages 1-6.

The United States District Court for the Northern District of Illinois, Eastern Division, did not issue an opinion.

JURISDICTION

The decision of the Seventh Circuit was filed on February 8, 1971. Jurisdiction to review said decision is conferred on this Court by 28 U.S.C. Section 1254(1) and invoked under the provisions of Rule 19 of the United States Supreme Court for the reasons that the Court of Appeals has (1) construed and interpreted an important federal statute, and regulations issued pursuant thereto, which have not been, but should be, settled and construed by this Court; (2) decided federal questions in a way in conflict with applicable decisions of this Court, particularly *United States* v. *Resnick,* 299 U.S. 207, and *Baggett* v. *Bullitt,* 377 U.S. 360; and (3) has sanctioned a departure by the District Court from an accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision.

QUESTIONS PRESENTED

Whether 7 U.S.C. §2023, which allows the Secretary of Agriculture to promulgate regulations concerning the issuance or redemption of food stamp coupons and provides for the imposition of criminal penalties against "whoever knowingly uses, transfers, acquires, or possesses coupons in any manner not authorized by this Chapter or the regulations issued pursuant to this Chapter," prohibits an approved retail food store from dis-

counting food stamp coupons to another approved retail food store; a lateral movement which neither redeems nor issues the coupons.

2. Whether an indictment referring only to "Title 7, Code of Federal Regulations, Section 1600 et. seq." encompasses an alleged violation of 7 C.F.R. Section 1602.4 when 7 C.F.R. § 1600 has five sections numbered: 1600.1, 1600.2, 1600.3, 1600.4, and 1600.5.

STATUTES AND REGULATIONS INVOLVED

7 U.S.C. §§ 2012, 2013, 2015(b), 2018 and 2023. See Appendix pages 7-10.

Regulations of the Department of Agriculture. 7 C.F.R. §§ 1600, 1600.1, 1600.2, 1600.3, 1600.4, 1600.5, and 1602.4. See Appendix pages 11-19.

STATEMENT OF THE CASE[1]

The indictment against the Defendant, Melvin Wilson,[2] alleged that: "On or about August 8, 1968, at Chicago, in the Northern District of Illinois, Eastern Division, Melvin Wilson . . . did knowingly use, transfer, acquire and possess food stamp coupons of a value of $100.00, in a manner not authorized by Title 7, United States Code, Sections 2011 through 2025 and the regulations issued pursuant thereto, Title 7, Code of Federal Regulations, Section 1600 et seq.; in violation of Title 7, United States Code, Section 2023." (R. 2)

The case was tried by the court without a jury (R. 17) and the evidence introduced by the Government showed as follows:

On August 8, 1968, the defendant, Melvin Wilson, owner of a grocery store operated in Chicago for 20 years under the name of Wilson's Food Mart (Tr. 108-9), who was an approved retail food dealer under the "Food Stamp Pro-

---

[1] On June 26, 1970, an order was entered by the Court of Appeals dispensing with the requirement of an appendix and granting permission to have the appeal heard on the original certified record on appeal. References are therefore to the record on appeal. "R." refers to the clerk's record and "Tr." to the transcript of proceedings.

[2] Originally, the indictment consisted of two counts and involved two defendants. The Government, on its own motion, dismissed the first count and dismissed the other defendant from the second count, so that the trial and conviction was limited to Count 2 and only against the defendant Melvin Wilson, who is the appellant herein (Tr. 2).

gram'' since its establishment in 1964 (Tr. 109), sold $1,650.00 worth of food stamps to William D. Crowel and Lamont Knazze, owners of a grocery store operated under the name of Select Groceries, who were also approved retail food dealers under the ''Food Stamp Program'' (Tr. 27). The defendant accepted $1,500.00 for the food stamps (Tr. 54-55). At the time of the transaction, the defendant knew Crowel and Knazze were police officers.

The defendant was found guilty and the sentence imposed upon the defendant is as follows (R. 19):

> ''It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three (3) years.
>
> It is further ordered that execution of sentence be and hereby is suspended and the defendant be and hereby is placed on probation to the Chief Probation Officer of this Court for a period of three (3) years, with the defendant to serve the first ninety (90) days of said probationary period in a Jail Type Institution, condition of probation being: the defendant shall re-compensate the Federal Defender's Office for expense incurred representing the defendant.
>
> It is further ordered and adjudged that the Defendant shall forfeit and pay to the United States of America a fine in the sum of Five Thousand ($5,000.00) Dollars and costs.''

Execution was stayed during the pendency of this Writ.

REASONS FOR GRANTING A WRIT

A. The Court of Appeals Has Interpreted and Construed an Important Federal Statute, and Regulations issued Pursuant Thereto, Which Have Not Been Interpreted and Construed by this Court. Further, the Court of Appeals Has Interpreted and Construed said Statute and Regulations in a Manner in Conflict With Applicable Decisions of This Court Interpreting an analogous Statute.

The statute and regulations involved provide specific methods for issuing and redeeming the food stamp coupons. The discounting of coupons from one approved retail food store to another approved retail food store is neither an insurance nor a redemption. Thus, such a discounting is not a violation of the regulations providing for specific methods of transferring coupons for issuance or redemption.

This is not mere semantic quibbling. We are dealing with different practices which have long been deemed mutually exclusive in commercial practice. The food stamp coupons are specifically "deemed to be obligations of the United States within the meaning of § 8 of Title 18." (7 U.S.C. § 2023(d)). This places food stamp coupons in the same classification as bonds, certificates of indebtedness, currency, checks and postage stamps.

In standard commercial practice, and with regard to other obligations of the United States, the terms "issuance" and "redemption" have generally accepted meanings. Issuance is the transfer that places the obligation into circulation. Redemption is the transfer that takes the

obligation out of circulation. Discounting at the same level is neither an issuance nor a redemption.

Other obligations of the United States are issued and redeemed in accordance with specific statutes and regulations. Any person failing to follow these statutes and regulations is generally subject to criminal penalties. However, discounting other obligations at the same level is not a crime unless specifically stated. Thus, if Congress intended to prohibit the discounting of food stamps from one approved retail food store to another approved retail food store it would have been specifically set forth.

That Congress did not intend to prohibit discounting from one food store to another is further supported by the clarity and directness by which Congress prohibited a similar procedure at the household level. Between the issuance of food stamps and their redemption, the coupons pass through two levels of use: (1) the eligible household to which they are issued, and (2) the approved retail food store where the individual purchases his food. The prohibition of any transfer from one individual to another is specifically set forth as follows:

> "The Secretary is authorized to formulate and administer a food stamp program under which, at the request of an appropriate State agency, eligible households within the State shall be provided with an opportunity more nearly to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a greater monetary value than their normal expenditures for food. *The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program.* Coupons issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States." (7 U.S.C. § 2013(a), emphasis added)

> "Coupons issued to eligible households shall be used by them only to purchase food in retail food stores which have been approved for participation in the food stamp program at prices prevailing in such stores: *Provided*, That nothing in this chapter shall be construed as authorizing the Secretary to specify the prices at which food may be sold by wholesale food concerns or retail food stores." (7 U.S.C. § 2015 (b))

There is no similar prohibition on the transfer from one food store to another. If Congress had intended to prohibit a discounting transfer at the retail food store level it would have been directly stated in similar terms; such as, "The coupons so received by such approved retail food store shall be transferred only for redemption to approved wholesale food concerns or banks." However, nowhere is the discounting of coupons by an approved retail food store prohibited.

A situation closely analogous to the facts in the case at bar, involving, as here, regulations of the Secretary of Agriculture, was before the United States Supreme Court in *United States* v. *Resnick*, 299 U.S. 207, wherein the Supreme Court, in a unanimous opinion (which is reproduced herein in toto) said:

> "Appellees were indicted for violations of the Act of May 21, 1928, 45 Stat. 685, 15 U. S. C. §§ 257-257i. In No. 62, the indictment is in four counts, each of which charges that defendants sold for fruits and vegetables two-quart metal hampers which did not comply with the Act in that they were not of any standard size authorized by the Act and did not come within any tolerance established by the Secretary of Agriculture. In No. 63, the indictment is in two counts. The first charges that defendant manufactured two-quart metal hampers that were not of any authorized size or within prescribed tolerances, without having submitted dimension specifications to the Secretary.

The second charges sale of them. In each case, the accused demurred upon the ground that the facts alleged are not sufficient to constitute a violation of the Act. The court sustained the demurrers and discharged the defendants. The United States appealed. 19 U. S. C., § 682.

"Section 1 of the Act declares: 'That the standard hampers . . . for fruits and vegetables shall be of the following capacities,' and specifies nine sizes based upon a bushel of 2150.42 cubic inches. The sizes so defined are one-eighth, one-fourth, one-half, five-eighths, three-fourths, one bushel, one and one-fourth, one and one-half, and two bushels. Computed according to the standard fixed, the capacity of a two-quart hamper is 134.4 cubic inches. Section 3 directs the Secretary of Agriculture to prescribe such tolerances as he may find necessary to allow in the capacities set forth in § 1. Section 4 commands: 'That no manufacturer shall manufacture hampers . . . unless the dimension specifications . . . shall have been submitted to and approved by the Secretary of Agriculture, who is hereby directed to approve such specifications if he finds that hampers . . . made in accordance therewith would not be deceptive in appearance and would comply with' section 1. Section 5 makes it 'unlawful to manufacture for sale . . . [or] to sell . . . hampers . . . for fruits or vegetables . . . that do not comply with this Act . . .' Anyone 'that violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500.'

"The question is whether the provisions of the Act are effective to make the manufacture or sale of two-quart hampers punishable as a crime. The nine sizes standardized in § 1 are the only ones within § 4. The Secretary was not authorized by § 3 to prescribe tolerances in respect of two-quart hampers, and has not attempted to do so. The indictments must be construed to charge merely manufacture and sale of hampers each of capacity of two quarts, one-sixteenth

of a bushel, 134.4 cubic inches. They do not charge that any such hamper purported to be of any size defined by § 1, or was in any respect likely to deceive. It follows that, unless the clause of § 5 which forbids manufacture or sale of containers 'that do not comply with this Act' makes criminal the manufacture or sale of two-quart hampers, the facts alleged do not constitute any offense.

"Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. *United States* v. *Wiltberger,* 5 Wheat. 76, 95. *Fasulo* v. *United States,* 272 U.S. 620, 628. The clause just quoted is crucial; its words are plain and, having regard to the connection in which they are used, must be given the meaning naturally attributable to them. It is obvious that they do not extend to hampers other than the nine classes defined in § 1. The Act applies to none of capacity less than four quarts. *Pacific States Box Co.* v. *White,* 296 U.S. 176, 183. It expresses no condemnation of two-quart hampers. Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. *United States* v. *Lacher,* 134 U.S. 624, 628. *United States* v. *Chase,* 135 U. S. 255, 261. *Fasulo* v. *United States, supra,* 629. As in absence of governmental regulation the making and selling of containers is untrammeled, failure expressly to permit is not to prohibit. Mere standarization of a bushel container at 2150.42 cubic inches would not make criminal the manufacturing or sale of a half-bushel container having capacity of 1075.21 cubic inches. The prescribing of capacities of containers described in § 1 does not prohibit manufacture or sale of the two-quart hampers described in these indictments.

"The judgments sustaining the demurrers and discharging the accused must be

Affirmed."

The analogous situation between *Resnick* and the case at bar compels the same results. In *Resnick* the act specified nine standard sizes for fruit and vegetable hampers and a set of tolerances to be followed in the manufacturing of the hampers. The defendants manufactured hampers of a size different from any specified in the act and did not follow the tolerances established by the Secretary of Agriculture. In affirming the dismissal of the indictment, this Court pointed out that the Act expresses no condemnation of hampers of a different size than those specified and held "an absence of governmental regulation the making and selling of containers is untrammeled, failure expressly to permit is not to prohibit . . . The proscribing of capacity of containers described in § 1 does not prohibit manufacture or sale of the two-quart hampers."

In the case at bar, the Act and regulations in question set forth procedures to be followed for the issuance and redemption of food stamp coupons. The defendant discounted the coupons to another approved retail food store, a transfer which involved neither the issuance nor the redemption of the food stamp coupons. The Act expresses no condemnation of the discounting of coupons from one approved retail food store to another approved retail food store. In the absence of governmental regulation the discounting of obligations of the United States is untrammeled and failure expressly to permit is not to prohibit. The proscribing of specific methods of issuance and redemption of coupons does not prohibit discounting of the coupons.

The decision of the Seventh Circuit and the interpretation placed on the statute and regulations in question also violates the holding of this Court in *Baggett* v. *Bullitt*, 377 U.S. 360, which stated at page 367:

> ". . . a law forbidding or requiring conduct in terms so vague that men of common intelligence must neces-

sarily guess at its meaning and differ as to its application violates due process of law. *Connally* v. *General Construction Co.*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U.S. 451; *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495; *United States* v. *Cardiff*, 344 U. S. 174; *Champlin Refining Co.* v. *Corporation Comm'n of Oklahoma*, 286 U. S. 210."

B. The Decision Of The Court Of Appeals Establishes That The Prosecution May Mislead The Accused By Use Of The Phrase, "Et Seq." In Violation Of The Sixth Amendment To The Constitution Of The United States And Rule 7(c) Of The Federal Rules Of Criminal Procedure.

The indictment refers to "Title 7, United States Code, Sections 2011 through 2025 and the regulations issued pursuant thereto, Title 7, Code of Federal Regulations, Section 1600 et seq." (R. 2). The regulation referred to in the indictment as "Section 1600 et seq." contains five sections numbered: 1600.1, 1600.2, 1600.3, 1600.4 and 1600.5.

None of the above sections prohibits the discounting of food stamps, as was done by the defendant in the case at bar.

It is to be especially noted that the indictment does not charge the defendant with improper "redemption" and, in fact, redemption is not involved herein, as the defendant did not redeem the food stamps; he merely sold them at a discount.

In opposition to the defendant's motion for acquittal, the government relied upon regulation 1602.4. The Court of Appeals based its decision on regulation 1602.4, which is the only regulation specifically cited in the Opinion. This regulation is not specified in the indictment.[1] The failure

[1] It must not be overlooked that regulation 1602.4 also deals with "redemption" which term is not even mentioned in the indictment.

to specifically state the exact regulation which the defendant is alleged to have violated prohibits the government from relying on that regulation for conviction.

To hide the specific regulation relied upon under the phrase "et seq." is a deceptive, misleading practice which is prohibited by the Sixth Amendment to the Constitution of the United States and Rule 7(c) of the Federal Rules of Criminal Procedure.

The Sixth Amendment provides that "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation."

Rule 7(c) provides: "The indictment or information shall state for each count the official or customary citation of the Statute, Rule, Regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be grounds for dismissal of the indictment or information, or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice."

The deceptiveness of using, "et seq." to refer to the regulations is further increased by the reference to the statutory provisions as "Sections 2011 through 2025". Thus, the statutory reference in the indictment uses the all encompassing term "through" while the reference to the regulations, under the theory advanced by the government, requires the defendant to guess at which regulation is involved, without any guidelines.

The question presented here is one of the first impression. We submit that it involves an important question of federal law and procedure which should be settled by this court. The procedure followed in this case, and sanctioned by the Court of Appeals, is also a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

CONCLUSION

Petitioner respectfully requests that this Court issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and direct that court to reverse the judgment of conviction of the petitioner in the United States District Court for the Northern District of Illinois, Eastern Division, for all of the foregoing reasons and pursuant to the above cited authority.

Respectfully submitted,

HARRY G. FINS
Attorney for Petitioner

APPENDIX

APPENDIX

Opinion of Court of Appeals

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1970—SEPTEMBER SESSION, 1970

No. 18554

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MELVIN WILSON,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

February 8, 1971

Before CASTLE, *Senior Circuit Judge*, and KILEY and PELL, *Circuit Judges*.

CASTLE, *Senior Circuit Judge*. The defendant-appellant, Melvin Wilson, prosecutes this appeal from a judgment order of conviction and sentence entered following his trial before the court without a jury on Count II of an indictment charging him with a violation of 7 U.S.C.A. §2023.[1] He was sentenced to three years imprisonment

[1] The indictment consisted of two counts and named two defendants. The government dismissed the first count and dismissed the other defendant from the second count.

and fined $5000 and costs. Execution of the sentence was suspended and defendant placed on probation for a period of three years, the first ninety days of the probationary period to be served in a jail-type institution, and a condition of probation being that defendant re-compensate the Federal Defender's Office for expense incurred in representing him.[2]

7 U.S.C.A. §2023 (Section 14 of the Food Stamp Act of 1964, P.L. 88-525, 78 Stat. 703) relates, inter alia, to the "transfer" of food stamp coupons. It provides, insofar as here pertinent, that:

> "(b) Whoever knowingly uses, transfers, acquires, or possesses coupons in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons are of the value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, . . ."

Another section of the same enactment (7 U.S.C.A. §2018, Section 9 of the Food Stamp Act of 1964) provides that the Secretary of Agriculture in issuing regulations he is required to issue for the administration of the food stamp program:

> ". . . shall provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through banks, with the cooperation of the Treasury Department."

The regulations so issued by the Secretary of Agriculture (7 C.F.R. Section 1600 et seq.) authorize the transfer of

---

[2] At his trial the defendant was represented by court-appointed counsel supplied through the Federal Defender Program. The presentence report revealed that the defendant was not indigent but in addition to other assets had approximately $14,300 in savings.

food stamps coupons by a retail food store authorized to participate in the food stamp program (Section 1602.4) only by the presentment of such coupons to an authorized wholesale food concern, or to a commercial bank, for redemption. In connection with such redemption the retailer is required to endorse each coupon with the store's name or its authorization number and to furnish a redemption certificate form provided by the Consumer and Marketing Service of the United States Department of Agriculture.

The evidence adduced at the defendant's trial amply establishes the existence of facts which may be summarized as follows:

On August 8, 1968, the defendant was the owner of a grocery store located in Chicago, Illinois, which he operated under the name of Wilson's Food Mart. Since 1964 he had been authorized to participate in the federal food stamp program as a retail food store. He usually deposited from $1,500 to $1,600 in food stamp coupons each week, either through a wholesale food concern or a commercial bank. On the above date the defendant sold food stamp coupons worth $1,650 to William D. Crowell and Lamont Knazze for $1,500. The coupons were not endorsed by the defendant and were not accompanied by a certificate of redemption. Crowell and Knazze were partners in the operation of Select Groceries, a Chicago retail food store which also was authorized to participate in the federal food stamp program. Select Groceries was not an authorized wholesale food concern.

The August 8, 1968, transaction followed an offer made by the defendant to Crowell and Knazze on July 31, 1968, to sell them $1,000 worth of food stamp coupons for $950. On that occasion in response to being advised that both Crowell and Knazze were police officers, the defendant

replied, "Yes, I know you're police officers, but everybody likes to make a little money". Crowell and Knazze told the defendant they would think over his offer. They reported the offer and were contacted by agents of the Department of Agriculture. Arrangements were then made which culminated in the August 8, 1968, transaction. The defendant brought the $1,650 worth of food stamp coupons to Select Groceries and he was given $950 in cash and $550 in checks in payment for the coupons. In connection with the transaction inquiry was made as to future purchases, and the defendant was asked if a large amount of stamps could be so acquired. He replied in the affirmative and stated that he had about $30,000 worth of stamps as "this is a big operation". Immediately following the transaction the defendant was arrested by a Secret Service Agent, and the currency and checks given him by Crowell and Knazze were found on his person.

On appeal the defendant contends that his actions in the premises constitute merely a discounting of $1,650 worth of food stamp coupons for $1,500. He argues that nowhere in the statutes, or in the regulations issued pursuant thereto, is the discounting of food stamps prohibited and, consequently, the evidence adduced at the trial does not establish an offense. In this connection he also asserts that none of the statutory sections or regulations cited in the indictment prohibits the discounting of food stamp coupons.

The statutory sections and sections of the regulations cited in the indictment embrace those which we have made reference earlier in this opinion. Thus, in our opinion, it satisfied the requirements of Rule 7(c) of the Federal Rules of Criminal Procedure. And, in other respects, the indictment sufficiently charged an offense so

as to make it invulnerable to any contention that it violated Sixth Amendment standards.[3]

As heretofore pointed out, 7 U.S.C.A. § 2018 and 7 C.F.R. Section 1602.4 establish the only authorized manner in which food stamp coupons may be transferred lawfully by a retail food dealer participating in the food stamp program. These provisions are apparently designed to prevent trafficking in such coupons. Defendant's contention that his "discounting" of the coupons here involved is not by virtue of §2018 and Section 1602.4 of the regulations and unauthorized transfer within the proscriptions of 7 U.S.C.A. §2023 ignores the patent fact that his sale of the stamps albeit at a discount was a transfer—and a transfer in a "manner not authorized" by the Food Stamp Act of 1964 or the regulations issued pursuant thereto.

Defendant's reliance on *United States* v. *Resnick,* 299 U.S. 207, is misplaced. *Resnick* involved a 1928 enactment (15 U.S.C. §§ 257-257i, since repealed) which regulated the manufacture and sale of certain sized hampers for fruits and vegetables. The nine specific sizes of hampers mentioned in the statute were based on a standard bushel of 2150.42 cubic inches. These hampers, among other things, were required to meet tolerances prescribed by the Secretary of Agriculture. The nine specified sizes did not include a two-quart (one-sixteenth of a bushel) hamper. The smallest of the designated sizes was a one-eighth-bushel (268.8 cubic inches) hamper. The Court, noting that in the absence of governmental regulation "the making and selling of containers is untrammeled" and that the statute contained no express condemnation of two-quart hampers, held that the statute did not prohibit the

---

[3] *Cf. United States* v. *Debrow,* 346 U.S. 374.

manufacture or sale of two-quart hampers nor subject them to the requirements it made in connection with the manufacture and sale of the specific sizes of hampers designated in the statute.

We do not find *Resnick* apposite. We are here concerned with coupons which are recognized as an obligation of the United States (7 C.F.R. Section 1600.4) and are intended for use only in connection with a federal food distribution program, not with an ordinary article of trade and commerce the manufacturing and selling of which is untrammeled absent specific governmental regulation. But more important, 7 U.S.C.A. §2023 proscribes the use or transfer of these coupons "in any manner not authorized" by the statute or the regulations issued pursuant thereto. Here, both the language and the context of the prohibition is such that, unlike *Resnick,* there must be an authorization of the transfer rather than an express interdiction. And that authorization is lacking.

The judgment order appealed from is affirmed.

AFFIRMED

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

TITLE 7 OF UNITED STATES CODE

§ 2012. Definitions.

As used in this chapter—

(a) The term "Secretary" means the Secretary of Agriculture.

(b) The term "food" means any food or food product for human consumption except alcoholic beverages, tobacco, those foods which are identified on the package as being imported, and meat and meat products which are imported.

(c) The term "coupon" means any coupon, stamp, or type of certificate issued pursuant to the provisions of this chapter.

(d) The term "coupon allotment" means the total value of coupons to be issued to a household during each month or other time period.

(e) The term "household" shall mean a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. The term "household" shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption.

(f) The term "retail food store" means an establishment, including a recognized department thereof, or a house-to-house trade route which sells foods to households for home consumption.

(g) The term "wholesale food concern" means an establishment which sells food to retail food stores for resale to households.

(h) The term "State agency" means the agency of the State government which has responsibility for the administration of the federally aided public assistance programs.

(i) The term "bank" means member or non-member banks of the Federal Reserve System.

(j) The term "State" means the fifty States and the District of Columbia.

(k) The term "food stamp program" means any program promulgated pursuant to the provisions of this chapter.

§ 2013. Establishment of program.

(a) Use of coupons; redeemability.

The Secretary is authorized to formulate and administer a food stamp program under which, at the request of an appropriate State agency, eligible households within the State shall be provided with an opportunity more nearly to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a greater monetary value than their normal expenditures for food. The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

(b) Distribution of federally owned foods.

In areas where a food stamp program is in effect, there shall be no distribution of federally owned foods to households under the authority of any other law except during emergency situations caused by a national or other disaster as determined by the Secretary.

(c) Regulations.

The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

§ 2015. Coupons—Issuance

(a) Coupons shall be printed in such denominations as may be determined to be necessary, and shall be issued only to households which have been duly certified as eligible to participate in the food stamp program.

Approved food stores; usage in

(b) Coupons issued to eligible households shall be used by them only to purchase food in retail food stores which have been approved for participation in the food stamp program at prices prevailing in such stores: *Provided,* That nothing in this chapter shall be construed as authorizing the Secretary to specify the prices at which food may be sold by wholesale food concerns or retail food stores.

Design of coupons

(c) Coupons issued to eligible households shall be simple in design and shall include only such words or illustrations as are required to explain their purpose and define their denomination. The name of any public official shall not appear on such coupons.

§ 2018. Redemption of coupons.

Regulations issued pursuant to this chapter shall provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through banks, with the cooperation of the Treasury Department.

§ 2023. Violations and enforcement; issuance or presentment for redemption of coupons; penalties; coupons as obligations of United States.

(a) Notwithstanding any other provisions of this chapter, the Secretary may provide for the issuance or presentment for redemption of coupons to such person or persons, and at such times and in such manner, as he deems necessary or appropriate to protect the interests of the United States or to insure enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter.

(b) Whoever knowingly uses, transfers, acquires, or possesses coupons in any manner not authorized by this Chapter or the regulations issued pursuant to this Chapter shall, if such coupons are of the value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for no more than five years, or both, or, if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this chapter or the regulations issued pursuant to this chapter shall be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both.

(d) Coupons issued pursuant to this chapter shall be deemed to be obligations of the United States within the meaning of section 8 of Title 18.

REGULATIONS OF DEPARTMENT OF AGRICULTURE

PART 1600 — GENERAL INFORMATION AND DEFINITIONS

Sec.

1600.1 General purpose and scope.

1600.2 Definitions.

1600.3 Administration.

1600.4 Coupons as obligations of the United States, crimes and offenses.

1600.5 Miscellaneous provisions.

§ 1600.1. General purpose and scope.

The Food Stamp Act of 1964 (P.L. 88-525, 78 Stat. 703) authorizes the Secretary of Agriculture to formulate and administer a food stamp program for the purpose of encouraging the increased utilization of the nation's abundance of food by raising levels of nutrition among low-income households. The regulations in this chapter are issued for the purpose of effectuating the provisions of the Act. These revised regulations prescribe the policies and procedures governing the participation in the Program of State agencies, eligible households, retail food stores, wholesale food concerns, banks and other persons concerned with the issuance, possession, negotiation and redemption of coupons under the Program. This revised Part 1600 contains general information, definitions, and other material, applicable to the Program as a whole. Revised Part 1601 sets forth policies and procedures governing the manner in which State agencies desiring to participate in the Program will carry out the administrative

responsibilities assumed by them under the provisions of the Food Stamp Act of 1964, and further prescribes the manner in which eligible households can obtain and use coupons issued to them by such State agencies. Revised Part 1602, to be published at a later date, will set forth additional terms and conditions relating to the participation of retail food stores, wholesale food concerns and banks.

§ 1600.2. Definitions

For the purpose of this chapter, the term:

(a) "Application form" means C&MS forms "Retailer Application for Authorization to Participate in the Food Stamp Program" or "Wholesaler Application for Authorization to Participate in the Food Stamp Program," or both as required by the context.

(b) "Authorization" means the approval by C&MS of retail food stores and wholesale food concerns to participate in the Program.

(c) "Authorization card" means the C&MS form which evidences approval of a retail food store or a wholesale food concern to participate in the Program.

(d) "Bank" means member and non-member banks of the Federal Reserve System.

(e) "Coupon" means any coupon, stamp, or type of certificate issued pursuant to the provisions of this chapter for the purchase of eligible food.

(f) "C&MS" means the Consumer and Marketing Service of the U.S. Department of Agriculture.

(g) "Coupon allotment" means the total value of coupons issued to a household during each month or other time period not in excess of 1 month.

(h) "Department" means the U.S. Department of Agriculture.

(i) "Eligible food" means any food or food product for human consumption except alcoholic beverages, tobacco, those foods which are identified on the package as being imported, and meat and meat products which are imported.

(j) "Eligible household" means a household that lives in a project area and whose income and resources are determined to be a substantial limiting factor in the attainment of nutritionally adequate low-cost diet.

(k) "Federal fiscal year" means a period of 12 calendar months beginning with July 1 of any calendar year and ending with June 30 of the following calendar year.

(l) "Federally aided public assistance program" means any of the following programs authorized in the Social Security Act of 1935, as amended: Old-Age Assistance, Aid to Families with Dependent Children, Aid to the Blind, and Aid to the Permanently and Totally Disabled.

(m) "Federal reserve banks" means the 12 Federal Reserve Banks and their 24 branches.

(n) "Firm" means a retail food store or a wholesale food concern.

(o) "Firm retailer" means any individual, partnership, corporation or other legal entity owning or operating a retail food store.

(p) "Food wholesaler" means any individual, partnership, corporation or other legal entity owning or operating a wholesale food concern.

(q) "Free coupons(s)" mean(s) that portion of the coupon allotment that is in excess of the amount paid by an eligible household for its coupon allotment.

(r) "Head of the household" means the member of the household in whose name application is made for participation in the Program.

(s) "Household" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. It shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption.

(t) "Program" means the Food Stamp Program conducted under the Food Stamp Act of 1964 (P.L. 88-525, 78 Stat. 703) and the provisions of this chapter.

(u) "Project area" means the political subdivision within a State which has been approved for participation in the Program by the Department.

(v) "Purchase requirement" means the amount to be paid by an eligible household for its coupon allotment.

(w) "Redemption certificate" means C&MS Forms: "Retail Merchants Food Stamp Program Redemption Certificate"; or "Wholesale Food Stamp Program Redemption Certificate," or both as required by the context.

(x) "Retail food store" means an establishment, including a recognized department thereof, or a house-to-house trade route which sells eligible food to households for home consumption.

(y) "State" means any 1 of the 50 States or the District of Columbia.

(z) "State agency" means the agency of the State government, including the local offices thereof, which has

the responsibility for the administration of the federally aided public assistance programs within the State, and, in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency.

(aa) "State issuing agency" means another agency of the State government to which the State agency delegates its statewide administrative responsibilities in connection with the issuance of coupons.

(bb) "Wholesale food concern" means an establishment which sells eligible food to retail food stores for resale to households.

§ 1600.3 Administration.

(a) Within the Department, C&MS shall act on behalf of the Department in the administration of the Program.

(b) The State agency shall, except as provided in this chapter, be responsible for the administration of the Program within the State, including, but not limited to, the certification of applicant households; the acceptance, storage and protection of coupons after their delivery to receiving points within the State; and the issuance of coupons to eligible households and the control and accountability therefor: *Provided,* That the State agency may, subject to State law, and under agreement or contract, delegate its Statewide administrative responsibility in connection with the issuance of coupons to another agency of the State government. In the event such administrative responsibility in connection with the issuance of coupons is delegated as permitted by this paragraph, the provisions of this chapter applicable thereto shall be carried out by such other agency of the State government under the di-

rection of the State agency and the State agency shall be responsible to the Department for the carrying out of the delegated responsibilities and for the payment of any claims arising out of any failure of the other agency of the State government to carry out any such delegated responsibilities.

§ 1600.4. Coupons as obligations of the United States, crimes and offenses.

(a) Coupons are an obligation of the United States within the meaning of 18 U.S.C. 8. The provisions of Title 18 of the U.S. Code, "Crimes and Criminal Procedure," relative to counterfeiting and alteration of obligations of the United States and the uttering, dealing in, etc., of counterfeit obligations of the United States are applicable to coupons.

(b) Any unauthorized issuance, use, transfer, acquisition, possession or presentation of coupons may subject any individual, partnership, corporation, or other legal entity involved to prosecution under sections 14 (b) and (c) of the Food Stamp Act of 1964 (Public Law 88-525, 78 Stat. 703). These sections of the Act read as follows:

(b) Whoever knowingly uses, transfers, acquires, or possesses coupons in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons are of the value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in

violation of the provisions of this Act or the regulations issued pursuant to this Act shall be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons are of a value less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $5,000 or imprsioned for not more than one year, or both.

(c) All individuals, partnerships, corporations, or other legal entities including State agencies and their delegates (referred to in this paragraph as "persons") having custody, care and control of coupons, shall at all times, use care and caution in receiving, storing, transmitting, or otherwise handling coupons to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and to avoid any unauthorized transfer, negotiation, or use of coupons. Such persons shall also use care and caution in safeguarding coupons from theft, embezzlement, loss, dmaage or destruction. Any false statement made by any person, in any application or certification required by this chapter, by the Plan of Operation of any State agency, or by instructions of C&MS, may subject such person to criminal prosecution under any applicable provision of federal law or to civil liability under the provisions of 31 U.S.C. 231 or either, or both, as well as to any legal action as may be maintained under State law.

§ 1600.5 Miscellaneous provisions.

(a) C&MS shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim arising under the provisions of this chapter.

(b) Persons or agencies desiring information concerning the Program should write to the appropriate Area Food Distribution Office of C&MS as follows:

(1) For project areas in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia: U.S. Department of Agriculture, C&MS, Food Distribution, Northeast Area, 346 Broadway, Room 604, New York, N.Y., 10013;

(2) For project areas in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia: U.S. Department of Agriculture, C&MS, Food Distribution, Southeast Area, 50 Seventh Street NE., Room 252, Atlanta, Ga., 30323;

(3) For project areas in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin: U.S. Department of Agriculture, C&MS, Food Distribution, Midwest Area, 536 South Clark Street, Chicago, Ill., 60605;

(4) For project areas in Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, C&MS, Food Distribution, Southwest Area, 500 South Ervay Street, Room 3-127, Dallas, Tex., 75201;

(5) For project areas in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming: U.S. Department of Agriculture, C&MS, Food Distribution, Western Area, Appraisers Building, Room 734, 630 Sansome Street, San Francisco, Calif., 194111.

(c) *Saving clause.* The Department reserves the right at any time to withdraw, modify or amend this chapter.

(d) *Effective date.* The provisions of this chapter shall become effective on publication thereof in the FEDERAL REGISTER: *Provided, however,* That in the case of those

geographic areas in which Pilot Food Stamp Programs are presently operating under the provisions of 6 CFR Part 540 the provisions of this chapter shall not be operative or effective until further notice is published in the FEDERAL REGISTER specifying the effective date(s) for the provisions of this chapter for each such geographic area and until such notice(s) the provisions of 6 CFR Part 540 shall continue to govern the operation of the Pilot Food Stamp Program in such areas.

---

§ 1602.4 Procedure for redeeming coupons.

(a) Coupons accepted by a retail food store or a wholesale food concern prior to the receipt by such firm of an authorization card from C&MS shall not be presented for redemption under the procedure set forth in this section, except that the Consumer Food Programs Officer-In-Charge, in accordance with procedures set forth in § 1602.7, may approve such redemption if the criteria in § 1602.7(b) are met.

(b) Each authorized retail food store or authorized wholesale food concern shall stamp or otherwise indicate its authorization number or the name of such store or concern on each coupon prior to the time such coupons are presented for redemption under the procedure provided in this part.

(c) Authorized retail food stores and authorized wholesale food concerns will be provided by C&MS with redemption certificates which shall be used in presenting coupons to commercial banks for credit or for cash. Authorized retail food stores shall also use such certificates in presenting coupons to authorized wholesale food concerns for redemption.